

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

DWAYNE SIMS,

Plaintiff,

V.

C/O MCCLOUD, et al.,

Defendants.

Case No. 1:23-cv-105-JPH-SKB

Judge Jeffery P. Hopkins

ORDER ADOPTING REPORT AND RECOMMENDATION

This matter is before the Court on the Report and Recommendation issued by Magistrate Judge Stephanie K. Bowman on May 8, 2023. Doc. 11. After performing an initial screen of Plaintiff's Complaint pursuant to 28 U.S.C. § 1915(e)(2), the Magistrate Judge recommended that the Court dismiss certain claims in Plaintiff's Complaint for failure to state a claim on which relief may be granted. Specifically, the Magistrate Judge recommends dismissal of all claims *except* Plaintiff's Eighth Amendment excessive force claim against Defendant McCloud, Eighth Amendment denial of medical care claim against Defendant Samson, and First Amendment retaliation claim against Defendant Oppy. The Magistrate Judge also recommends denial of Plaintiff's motion for a preliminary injunction/temporary restraining order (Doc. 5).

The Court has reviewed Plaintiff's Complaint, Plaintiff's motion for a preliminary injunction/temporary restraining order (Doc. 5), and the Report and Recommendation. Noting that no objections have been filed and that the time for filing such objections under

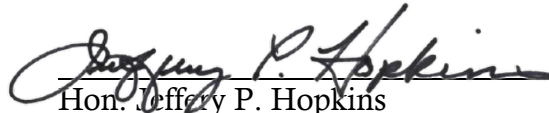
Fed. R. Civ. P. 72(b) has expired, the Court hereby **ADOPTS** the Report and Recommendation in its entirety.

Accordingly, it is hereby **ORDERED** that the Complaint be **DISMISSED** with prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b), *with the exception of* Plaintiff's Eighth Amendment excessive force claim against Defendant C/O McCloud, Eighth Amendment denial of medical care claim against Defendant Corey Samson, and First Amendment retaliation claim against Defendant Jeremy Oppy. It is **FURTHER ORDERED** that Plaintiff's motion for preliminary injunction/temporary restraining order (Doc. 5) is **DENIED**.

For the reasons stated in the Report and Recommendation and pursuant to 28 U.S.C. § 1915(a)(3), the Court certifies that an appeal of this Order would not be taken in good faith. The Court accordingly **DENIES** Plaintiff leave to appeal *in forma pauperis*. In accordance with Fed. R. App. P. 24(a)(5), Plaintiff remains free to file a motion for leave to proceed on appeal *in forma pauperis* in the Sixth Circuit Court of Appeals. *Callihan v. Schneider*, 178 F.3d 800, 803 (6th Cir. 1999).

IT IS SO ORDERED.

Dated: September 30, 2023


Hon. Jeffrey P. Hopkins
United States District Judge